

§ 97.13 How does an insular area apply for a consolidated grant?

(a) An insular area may apply for a consolidated grant in lieu of filing an individual application for any of the programs listed in § 97.12 for which the insular area is eligible.

(b) The chief executive officer or his designee may submit a consolidated grant application at any time prior to expenditure of the funds proposed for consolidation. The application must specify the amount of funds proposed for consolidation, the titles of the programs that are the sources of funds that are to be consolidated and the titles of the programs under whose statutory authority the funds are to be expended.

(c) The application must contain the assurances, certifications, and other information required by the statutes and regulations applicable to those programs under which funds will be expended. If any of the requirements for these latter programs are substantially the same, they may be met by a single assurance, certification, or narrative, as appropriate. The application need not meet the application or other requirements for programs which are sources of funds for the consolidated grant but under whose authority no funds will be expended.

(d) If after receiving a consolidated grant, an insular area wishes to use funds for a purpose authorized by an eligible program that is not included in the consolidated grant, or by an eligible program that was included in the grant but was not intended as a program under which funds would be expended, the insular area must submit an amended application indicating the proposed change and containing the assurances, certifications and other information applicable to that program.

§ 97.14 How will grant awards be made?

The Secretary, or his designee, will award a consolidated grant to each insular area that applies for a consolidated grant and meets the requirements of this Part and of the statutes and regulations applicable to the programs under whose authority the consolidated grant funds will be expended. As long as the amount requested does

not exceed the amount for which the insular area is eligible under the programs that are being consolidated, the amount of the award will equal the amount requested in the application.

§ 97.15 For what purposes can grant funds be used?

Funds awarded under a consolidated grant must be used for purposes authorized by the statutes and regulations of the programs included in the consolidated grant. In its application for a consolidated grant the insular area is to indicate the amount of funds that will be allocated to the eligible programs.

§ 97.16 What fiscal, matching and administrative requirements apply to grantees?

(a) An insular area receiving a consolidated grant must comply with the statutes and regulations applicable to the programs under which the funds are to be used, except as otherwise provided in this part.

(b) In regard to programs included in a consolidated grant, an insular area need not comply with any of the statutory or regulatory provisions requiring recipients to match federal funds with their own or other funds.

(c) A single report may be submitted in lieu of any individual reports that may be required under the programs included in a consolidated grant.

PART 98—CHILD CARE AND DEVELOPMENT BLOCK GRANT**Subpart A—Purposes and Definitions**

Sec.

98.1 Purposes.

98.2 Definitions.

98.3 Effect on State law.

Subpart B—General Application Procedures

98.10 Lead agency responsibilities.

98.11 Administration under contracts and agreements.

98.12 Coordination and consultation.

98.13 Application content and procedures.

98.14 Plan process.

98.15 Assurances.

98.16 Plan provisions.

98.17 Period covered by Plan.

98.18 Approval and disapproval of Plans and Plan amendments.

§ 98.1

Subpart C—Eligibility for Services

- 98.20 A child's eligibility for child care services.
- 98.21 A child's eligibility for early childhood development and before- and after-school care services.

Subpart D—Program Operations (Child Care Services)—Parental Rights and Responsibilities

- 98.30 Parental choice.
- 98.31 Parental access.
- 98.32 Parental complaints.
- 98.33 Consumer education.
- 98.34 Parental rights and responsibilities.

Subpart E—Program Operations (Child Care Services)—State and Provider Requirements

- 98.40 Compliance with applicable State and local regulatory requirements.
- 98.41 Health and safety requirements.
- 98.42 Sliding fee scales.
- 98.43 Payment rates.
- 98.44 Priority for child care services.
- 98.45 Registration.
- 98.46 Nondiscrimination in admissions on the basis of religion.
- 98.47 Nondiscrimination in employment on the basis of religion.

Subpart F—Use of Block Grant Funds

- 98.50 Child care services.
- 98.51 Activities to improve the quality of child care and to increase the availability of early childhood development programs and before- and after-school care services.
- 98.52 Administrative activities.
- 98.53 Supplementation.
- 98.54 Restrictions on the use of funds.
- 98.55 Cost allocation.

Subpart G—Financial Management

- 98.60 Availability of funds.
- 98.61 Allotments for States.
- 98.62 Allotments for Territories and Tribes.
- 98.63 Reallotment.
- 98.64 Financial reporting.
- 98.65 Audits.
- 98.66 Disallowance procedures.
- 98.67 Fiscal requirements.

Subpart H—Program Reporting Requirements

- 98.70 Annual report requirement.
- 98.71 Content of report.

Subpart I—Indian Tribes

- 98.80 General procedures and requirements.
- 98.81 Application and plan.

45 CFR Subtitle A (10–1–97 Edition)

- 98.82 Coordination.
- 98.83 Requirements for Tribal programs.

Subpart J—Monitoring, Non-Compliance and Complaints

- 98.90 Monitoring.
- 98.91 Non-compliance.
- 98.92 Penalties and sanctions.
- 98.93 Complaints.

AUTHORITY: 42 U.S.C. 9858.

SOURCE: 57 FR 34413, Aug. 4, 1992, unless otherwise noted.

Subpart A—Purposes and Definitions

§ 98.1 Purposes.

(a) The purpose of the Child Care and Development Block Grant is to increase the availability, affordability, and quality of child care services. The program offers Federal funding to States, Territories, Indian Tribes, and Tribal organizations in order to:

(1) Provide low-income families with the financial resources to find and afford quality child care for their children;

(2) Enhance the quality and increase the supply of child care for all families, including those who receive no direct assistance under the Block Grant;

(3) Provide parents with a broad range of options in addressing their child care needs;

(4) Strengthen the role of the family;

(5) Improve the quality of, and coordination among, child care programs and early childhood development programs; and

(6) Increase the availability of early childhood development and before- and after-school care services.

(b) The purpose of these regulations is to provide the basis for administration of the Block Grant. These regulations provide that Grantees:

(1) Maximize parental choice through the use of certificates and through grants and contracts;

(2) Include in their programs a broad range of child care providers, including center-based care, family child care, in-home care, care provided by relatives and sectarian child care providers;

(3) Provide quality child care that meets applicable State and local requirements;

(4) Coordinate planning and delivery of services at all levels;

(5) Design flexible programs which provide for the changing needs of recipient families;

(6) Administer the Block Grant responsibly to ensure that statutory requirements are met and that adequate information regarding the use of public funds is provided;

(7) Maximize the impact of the additional funding available under the Block Grant by ensuring that Federal funds are used to supplement, not supplant, existing services, and ensuring that administrative costs are minimized; and

(8) Design programs which provide uninterrupted service to families and providers, to the extent statutorily possible.

§ 98.2 Definitions.

For the purpose of this part and part 99:

(a) *The Act* refers to the Child Care and Development Block Grant Act of 1990, section 5082 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, as codified at 42 U.S.C. 9858;

(b) *ACF* means the Administration for Children and Families;

(c) *The Application* is the request from a potential Grantee for funding under the Block Grant and includes such information as the amount of funding requested and the projected budget for the program, pursuant to § 98.13;

(d) *Assistant Secretary* means the Assistant Secretary for Children and Families, Department of Health and Human Services;

(e) *Before- and after-school services* means services which meet the requirements of § 98.51(e);

(f) *The Block Grant* means the Child Care and Development Block Grant; *Block Grant programs* will be used to generically describe all activities under the Block Grant, including child care services and quality and availability improvements pursuant to section 658E(c)(3)(B) of the Act, as well as quality and availability improvements, pursuant to sections 658E(c)(3)(C), 658G and 658H of the Act;

(g) *Caregiver* means an individual who provides child care services directly to an eligible child on a person-to-person basis;

(h) *Categories of care* means center-based child care, group home child care, family child care and in-home care;

(i) *Center-based child care provider* means a provider licensed or otherwise authorized to provide child care services for fewer than 24 hours per day per child in a non-residential setting, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

(j) *Child care certificate* means a certificate (that may be a check or other disbursement) that is issued by a Grantee directly to a parent who may use such certificate only as payment for child care services, pursuant to § 98.30. Nothing in this part shall preclude the use of such certificate for sectarian child care services if freely chosen by the parent. For the purposes of this part, a child care certificate is assistance to the parent, not assistance to the provider;

(k) *Child care provider that receives assistance* means a child care provider that receives Federal funds under the Block Grant pursuant to grants, contracts or loans, but does not include a child care provider to whom Federal funds under the Block Grant are directed only through the operation of a certificate program;

(l) *Child care services*, for the purposes of § 98.50, means the care given to an eligible child by an eligible child care provider;

(m) *The Department* means the Department of Health and Human Services;

(n) *Early childhood development program* means a program that meets the requirements of § 98.51(d);

(o) *Elementary school* means a day or residential school that provides elementary education, as determined under State law;

(p) *Eligible child* means an individual who meets the requirements of § 98.20;

(q) *Eligible child care provider* means:

(1) A center-based child care provider, a group home child care provider, a family child care provider, an in-home child care provider, or other

§ 98.2

provider of child care services for compensation that—

(i) Is licensed, regulated, or registered under applicable State or local law as described in § 98.40 or, if exempt from such requirements, is registered before receipt of payment as described in § 98.45; and

(ii) Satisfies State and local requirements, including those referred to in § 98.41 applicable to the child care services it provides; or

(2) A child care provider who is 18 years of age or older who provides child care services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, niece, or nephew of such provider, if such provider is registered before receipt of payment and complies with any State requirements that govern child care provided by the relative involved.

(r) *Family child care provider* means one individual who provides child care services for fewer than 24 hours per day per child, as the sole caregiver, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

(s) *Grantee* means the State, Territorial or Tribal governmental entity to which a grant is awarded and which is accountable for the use of the funds provided. The Grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document;

(t) *Group home child care provider* means two or more individuals who provide child care services for fewer than 24 hours per day per child, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

(u) *Indian Tribe* means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

45 CFR Subtitle A (10–1–97 Edition)

(v) *In-home child care provider* means an individual who provides child care services in the child's own home;

(w) *Lead agency* means the agency designated under §§ 98.10 and 98.16(a)(1);

(x) *Licensing or regulatory requirements* means requirements necessary for a provider to legally provide child care services in a State or locality, including registration requirements established under State, local or Tribal law other than those required pursuant to § 98.45;

(y) *Liquidation period* means the one-year period following the obligation period, and pertains only to State and Territorial Grantees;

(z) *Obligation period* means the time period during which a fiscal year's grant must be obligated, and pertains only to State and Territorial Grantees;

(aa) *Parent* means a parent by blood, marriage or adoption and also means a legal guardian, or other person standing *in loco parentis*;

(bb) *The Plan* means the Plan for the implementation of programs under the Block Grant;

(cc) *Program period* means the time period for using a fiscal year's grant and does not extend beyond the last day to liquidate funds;

(dd) *Programs* will be used generically to describe all activities under the Block Grant, including child care services and other activities pursuant to § 98.50 as well as quality and availability improvements pursuant to § 98.51;

(ee) *Provider* means the entity providing child care services;

(ff) *The regulation* refers to the actual regulatory text contained in parts 98 and 99 of this chapter;

(gg) *Secondary school* means a day or residential school which provides secondary education, as determined under State law;

(hh) *Secretary* means the Secretary of the Department of Health and Human Services;

(ii) *Sectarian organization or sectarian child care provider* means religious organizations or religious providers generally. The terms embrace any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. There is no

requirement that a sectarian organization or provider be managed by clergy or have any particular degree of religious management, control, or content;

(jj) *Sectarian purposes and activities* means any religious purpose or activity, including but not limited to religious worship or instruction;

(kk) *Services for which assistance is provided* means all child care services funded under the Block Grant, either as assistance directly to child care providers through grants, contracts, or loans, or indirectly as assistance to parents through child care certificates;

(ll) *Sliding fee scale* means a system of cost sharing by a family based on income and size of the family, in accordance with § 98.42;

(mm) *State* means any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (Palau), and includes Tribes unless otherwise specified;

(nn) *Tribe and Tribal Grantee* refer to Indian Tribes and Tribal organizations as defined at paragraphs (u) and (oo) of this section;

(oo) *Tribal organization* means the recognized governing body of any Indian tribe, or any legally established organization of Indians, including a consortium, which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, that in any case where a contract is let or grant is made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant; and

(pp) *Types of providers* means the different classes of providers under each category of care. For the purposes of the Block Grant, types of providers include non-profit providers, for-profit providers, sectarian providers and relatives who provide care.

§ 98.3 Effect on State law.

(a) Nothing in the Act or this part shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian organizations, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this part.

(b) If a State law or constitution would prevent Federal Block Grant funds from being expended for the purposes provided in the Act, without limitation, then States must segregate State and Federal funds.

Subpart B—General Application Procedures

§ 98.10 Lead agency responsibilities.

The lead agency, as designated by the chief executive officer of the State (or by the appropriate Tribal leader or applicant), shall:

(a) Administer the Block Grant program, directly or through other State agencies, in accordance with § 98.11;

(b) Submit an Application for funding under this part, pursuant to § 98.13;

(c) Consult with appropriate representatives of local government in developing a Plan to be submitted to the Secretary pursuant to § 98.14(b);

(d) Hold at least one public hearing in accordance with § 98.14(c); and

(e) Coordinate Block Grant services with other Federal, State and local child care and early childhood development programs, including such programs for the benefit of Indian children, pursuant to § 98.12.

§ 98.11 Administration under contracts and agreements.

(a) The lead agency has broad authority to share responsibilities for the administration of the program with other State agencies. In addition, the lead agency can share implementation of the program with other public or private local agencies; however:

(1) The lead agency must retain overall responsibility for the administration of the program, as defined in paragraph (b) of this section;

§ 98.12

(2) The lead agency shall serve as the single point of contact for issues involving the administration of the Grantee's Block Grant program; and

(3) The sharing of administrative and implementation responsibilities must be governed by written agreements which specify the mutual roles and responsibilities of the lead agency and the other agencies in meeting the requirements of this part.

(b) In retaining overall responsibility for the administration of the program, the lead agency must:

(1) Determine the basic usage and priorities for the expenditure of Block Grant funds;

(2) Promulgate all rules and regulations governing overall administration of the Plan;

(3) Submit all reports required by the Secretary;

(4) Ensure that the program complies with the approved Plan and all Federal requirements;

(5) Oversee the expenditure of funds by subgrantees and contractors;

(6) Monitor programs and services;

(7) Fulfill the responsibilities of the Grantee in any: disallowance under subpart G; complaint or compliance action under subpart J; or hearing or appeal action under part 99 of this chapter; and

(8) Ensure that all State and local agencies with whom it shares administrative responsibilities, including agencies and contractors which determine individual eligibility, operate according to the rules established for the program.

§ 98.12 Coordination and consultation.

The lead agency must:

(a) Coordinate the provision of services for which assistance is provided under this part with other Federal, State, and local child care and early childhood development programs, and before- and after-school programs as provided under § 98.10(e).

(b) Consult, in accordance with § 98.14(b), with representatives of general purpose local government during the development of the Plan; and

(c) Coordinate, to the maximum extent feasible, with any Indian Tribes in the State submitting Applications in accordance with subpart I of this part.

45 CFR Subtitle A (10–1–97 Edition)

§ 98.13 Application content and procedures.

(a) An Application for Block Grant funds must be made by the chief executive officer of a State. The Application must contain:

(1) The program period, as defined in § 98.2(cc), for which the Application is made;

(2) The amount of funds requested for such period;

(3) An assurance that the Grantee will comply with the requirements of the Act and this part;

(4) Pursuant to 45 CFR part 93, a lobbying certification which assures that the funds will not be used for the purpose of influencing, and, if necessary, a Standard Form LLL (SF-LLL) which discloses lobbying payments (Tribal applicants are not required to submit either the certification or form);

(5) Pursuant to 45 CFR 76.600, an assurance that the Grantee provides a drug-free workplace or a statement that such an assurance has already been submitted for all HHS grants;

(6) A budget of expenditures, which provides an estimate of the use and distribution of Block Grant funds during the period covered by the Application, including:

(i) A break-out of program activities under § 98.50, including a list of activities to improve the availability and quality of child care, and administrative costs, as described in § 98.52(b), the Grantee anticipates will be necessary to carry out the stated purposes of the program;

(ii) A detailed explanation, pursuant to § 98.50(d)(3), including appropriate documentation for the budget expenditures, if not consistent with the limitation at § 98.50(d)(2); and

(iii) A break-out of program activities under § 98.51 including administrative costs, as described in § 98.52(b), which the Grantee anticipates will be necessary to carry out the stated purpose of the program.

(7) Pursuant to 45 CFR 76.500, certification that no principals have been debarred;

(8)(i) For the initial Application, or first Application after publication of the final rule implementing the Block Grant, the amounts of Federal, State, and local public funds expended for the

support of child care and related programs during the base period, pursuant to § 98.53(b);

(ii) For subsequent Applications, the amounts of such funds expended during the applicable subsequent period; and,

(iii) If applicable, information regarding the nature, extent and basis for any reduction in Federal expenditures, and, for Tribal Grantees, in State expenditures, for programs other than the Block Grant, for the subsequent period;

(9) Assurances that the Grantee will comply with the applicable provisions regarding nondiscrimination at 45 CFR part 80 (implementing title VI of the Civil Rights Act of 1964, as amended), 45 CFR part 84 (implementing section 504 of the Rehabilitation Act of 1973, as amended), 45 CFR part 86 (implementing title IX of the Education Amendments of 1972, as amended) and 45 CFR part 91 (implementing the Age Discrimination Act of 1975, as amended);

(10) The Block Grant Plan, at times and in such manner as required in § 98.17; and

(11) Such other information as specified by the Secretary.

(b) Applications must be submitted annually or less frequently, as specified by the Secretary, at such time and in such manner as prescribed by the Secretary.

(c) In its initial Application, an Indian Tribe must provide a description of current service delivery skills, personnel, resources, community support, and other necessary components that will enable it to satisfactorily carry out the proposed Plan. Initial Applications submitted by consortia must also contain the additional information required under § 98.80 (c)(1) and (c)(4).

§ 98.14 Plan process.

In the development of each Plan, as required pursuant to § 98.17, the lead agency shall:

(a) Coordinate the provision of Block Grant services with other Federal, State, and local child care and early childhood development programs, including such programs for the benefit of Indian children;

(b) Consult with appropriate representatives of local governments to consider local child care needs and re-

sources, the effectiveness of existing child care and early childhood development services, and the methods by which Block Grant funds can be used to effectively address local child care shortages; and

(c) Hold at least one hearing, with adequate notice, to provide to the public an opportunity to comment on the provision of child care services under the Plan.

§ 98.15 Assurances.

The Block Grant Plan must include assurances that:

(a) Upon approval, the Grantee will have in effect a program which complies with the provisions of the Plan;

(b) The parent(s) of each eligible child within the State who receives or is offered child care services for which financial assistance is provided under § 98.50 is given the option either:

(1) To enroll such child with a child care provider that has a grant or contract for the provision of the service; or

(2) To receive a child care certificate as defined in § 98.2(j);

(c) In cases in which the parent(s), pursuant to § 98.30, elects to enroll their child with a provider that has a grant or contract with the lead agency, the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable;

(d) In accordance with § 98.30, the child care certificate offered to parents shall be of a value commensurate with the subsidy value of child care services provided under a grant or contract;

(e) The Grantee, in accordance with § 98.31, has procedures in place to ensure that providers of child care services for which assistance is provided under the Block Grant, afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operations and whenever such children are in the care of such providers;

(f) The Grantee, as required by § 98.32, maintains a record of substantiated parental complaints and makes information regarding such complaints available to the public, on request;

(g) Consumer education information will be made available to parents and the general public within the State (or

§ 98.16

other area served by the Grantee) concerning licensing and regulatory requirements, complaint procedures, the options available to parents through certificates, and policies and practices relative to child care services within the State (or other area served by the Grantee), as required by § 98.33;

(h) In accordance with § 98.40, all providers of child care services for which assistance is provided under the Block Grant will comply with all licensing and regulatory requirements applicable under State or local law;

(i) Providers of child care services for which assistance is provided under the Block Grant that are not licensed or regulated for the purpose of providing child care under State or local law are required to be registered with the Grantee prior to payment being made and that such providers shall be permitted to register with the Grantee after selection by the parents of eligible children and before such payment is made, as required by § 98.45;

(j) There are in effect within the State (or other area served by the Grantee), under State or local law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under the Block Grant, pursuant to § 98.41;

(k) In accordance with § 98.41, procedures are in effect to ensure that child care providers of services for which assistance is provided under the Block Grant comply with all applicable State or local health and safety requirements;

(l) If the State reduces the level of standards applicable to child care services provided in the State (or other area served by the Grantee) after November 5, 1990, the Grantee shall inform the Secretary of the rationale for such reduction in the annual report of the Grantee;

(m) The Grantee will, not later than 18 months after submission of the first Application, complete a full review of the law applicable to, and the licensing and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the State (or other area served by the Grantee) unless the Grantee has re-

45 CFR Subtitle A (10–1–97 Edition)

viewed such law, requirements, and policies in the three-year period ending on November 5, 1990;

(n) Pursuant to § 98.53, funds received through the Block Grant will be used only to supplement, not to supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs within the State (or other area served by the Grantee);

(o) Payment rates for the provision of child care services, in accordance with § 98.43, will be sufficient to ensure equal access for eligible children to comparable child care services in the State or substate area that are provided to children whose parents are not eligible to receive assistance under this program or under any other Federal or State child care assistance programs; and

(p) With respect to State and local regulatory requirements, health and safety requirements, payment rates, and registration requirements, State or local rules, procedures or other requirements promulgated for the purpose of the Block Grant will not significantly restrict parental choice from among categories of care or types of providers, pursuant to § 98.30(g).

§ 98.16 Plan provisions.

(a) A Block Grant Plan must contain the following:

(1) Specification of the lead agency whose duties and responsibilities are delineated in § 98.10;

(2) The assurances listed under § 98.15;

(3) A description of how the Block Grant program will be administered and implemented, if the lead agency does not directly administer and implement the program;

(4) A description of the coordination and consultation processes involved in the development of the Plan, pursuant to § 98.14 (a) and (b);

(5) A description of the public hearing process, pursuant to § 98.14(c);

(6) Definitions of the following terms for purposes of determining eligibility, pursuant to §§ 98.20(a) and 98.44:

(i) Special needs child;

(ii) Physical or mental incapacity (if applicable);

(iii) Attending (a job training or educational program);

(iv) Job training and educational program;

(v) Residing with;

(vi) Working;

(vii) Protective services (if applicable);

(viii) Very low income; and

(ix) *in loco parentis*.

(7) For child care services and activities to improve the availability and quality of child care, pursuant to § 98.50:

(i) A description of such services and activities;

(ii) Specification of the conditions under which availability of in-home care is limited (i.e., differences in payment rates);

(iii) A list of political subdivisions in which such services and activities are offered, if such services and activities are not available throughout the entire service area;

(iv) Provision for the reservation of 75 percent of overall Block Grant funds for such purposes, together with a plan for the allocation of, and prioritization of, such funds for such services and activities;

(v) Any additional eligibility criteria or priority rules (with appropriate definitions) established pursuant to § 98.20(b); and

(vi) Any eligibility criteria or priority rules for the receipt of grants and contracts;

(8) For activities to improve the quality of child care and to increase the availability of early childhood development and before- and after-school care services, pursuant to § 98.51:

(i) A description of such activities;

(ii) A list of political subdivisions in which such activities are offered, if such activities are not available throughout the entire service area;

(iii) Provision for the reservation of 25 percent of overall Block Grant funds for such purposes, together with a plan for allocation of, and prioritization of, such funds for such services and activities;

(iv) Any additional eligibility criteria or priority rules for children receiving such services established pursuant to § 98.21(b), with appropriate definitions; and

(v) A description of any eligibility criteria or priority rules for the receipt

of grants and contracts, in addition to those in § 98.51(c)(2);

(9) A description of the sliding fee scale(s) (including any factors other than income and family size used in establishing the fee scale(s)) that provide(s) for cost sharing by the families that receive child care services for which assistance is provided under the Block Grant for child care services under § 98.50 and § 98.51, pursuant to § 98.42, if applicable;

(10) A description of the minimum health and safety requirements, applicable to all providers of child care services for which assistance is provided under the Block Grant, in effect pursuant to § 98.41;

(11) A description of the child care certificate payment system(s), including the form or forms of the child care certificate, pursuant to § 98.30(c);

(12)(i) Payment rates and a description of the methodology used to establish such rates for reimbursement of child care services pursuant to § 98.43; and, if applicable,

(ii) Based on a methodologically sound system for determining market costs:

(A) Justification of the Grantee's decision not to provide for differences in payment based on the setting (categories of care), age of the child or additional costs of providing care for children with special needs; or

(B) Justification for setting differential rates(s) within particular categories of care, including a description of the single system for providing child care pursuant to § 98.43(e)(2);

(13) A description of the registration process, including the timeframes within which payment will be made, pursuant to § 98.45;

(14) If the Grantee does not permit the expenditure of State funds for child care services unless it is first verified that certain requirements are met (e.g., a certification process), a description of the applicable process and timeframes;

(15) A description of activities that are planned to encourage public-private partnerships which promote business involvement in meeting child care needs, pursuant to § 98.71(b)(4);

(16) A description of the methodology used to establish the level of effort, if

§ 98.17

the Grantee chooses to use other than a level of government basis, pursuant to § 98.53(b)(1);

(17) Such other information as specified by the Secretary; and

(b) For Indian Tribes:

(1) The Plan must include the basis for determining family eligibility pursuant to § 98.80(f).

(2) Tribal programs are not subject to paragraph (a)(6)(viii) and prioritization under paragraph (a)(8)(iii) of this section.

(3) Plans for those Tribes specified at § 98.83(f) (i.e., Tribes with small grants) are not subject to the requirements in paragraphs (a)(7)(iv), (a)(8)(iii), and (a)(11) of this section, unless the Tribe chooses to include such services, and, therefore, the associated requirements, in its program.

§ 98.17 Period covered by Plan.

(a) For States and Territories, the initial Plan must cover a period of three years, and all subsequent Plans must cover a period of two years.

(b) For Indian Tribes, the initial Plan and any subsequent Plans must cover a period of two years.

(c) The lead agency must submit a new Plan prior to the expiration of the time period specified in paragraphs (a) and (b) of this section, at such time as required by the Secretary in written instructions.

§ 98.18 Approval and disapproval of Plans and Plan amendments.

(a) *Plan approval.* The Assistant Secretary will approve a Plan that satisfies the requirements of the Act and this part. Plans will be approved not later than the 90th day following the date on which the Plan submittal is received, unless a written agreement to extend that period has been secured.

(b) *Plan amendments.* Approved Plans must be amended whenever a substantial change in the program occurs. A Plan amendment must be submitted within 60 days of the effective date of the change. Plan amendments will be approved not later than the 90th day following the date on which the amendment is received, unless a written agreement to extend that period has been secured.

45 CFR Subtitle A (10–1–97 Edition)

(c) *Appeal of disapproval of a Plan or Plan amendment.* (1) An applicant or Grantee dissatisfied with a determination of the Assistant Secretary pursuant to paragraphs (a) or (b) of this section with respect to any Plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Assistant Secretary asking for reconsideration of the issue of whether such Plan or amendment conforms to the requirements for approval under the Act and pertinent Federal regulations.

(2) Within 30 days after receipt of such petition, the Assistant Secretary shall notify the applicant or Grantee of the time and place at which the hearing for the purpose of reconsidering such issue will be held.

(3) Such hearing shall be held not less than 30 days, nor more than 90 days, after the notification is furnished to the applicant or Grantee, unless the Assistant Secretary and the applicant or Grantee agree in writing on another time.

(4) Action pursuant to an initial determination by the Assistant Secretary described in paragraphs (a) and (b) of this section that a Plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Assistant Secretary subsequently determines that the original decision was incorrect, the Assistant Secretary shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied. The hearing procedures are described in part 99 of this chapter.

Subpart C—Eligibility for Services

§ 98.20 A child's eligibility for child care services.

(a) In order to be eligible for services under § 98.50, a child must:

(1)(i) Be under 13 years of age; or

(ii) At Grantee option, be under age 18 (or 19, if the State so provides in its definition of dependent child in its plan under title IV-A of the Social Security Act) and be physically or mentally incapable of caring for himself or herself, or under court supervision;

(2) Reside with a family whose income does not exceed 75 percent of the

State's median income for a family of the same size; and

(3)(i) Reside with a parent or parents (as defined in §98.2(aa)) who are working or attending a job training or educational program; or

(ii) Receive, or need to receive, protective services and reside with a parent or parents (as defined in §98.2(aa)) other than the parent(s) described in paragraph (a)(3)(i) of this section. At Grantee option, the requirements in paragraph (a)(2) of this section and in §98.42 may be waived for families eligible for child care pursuant to this paragraph, if determined to be necessary on a case-by-case basis by, or in consultation with, an appropriate protective services worker.

(b) Pursuant to §98.16(a)(7)(v), a Grantee or other administering agency may establish eligibility conditions or priority rules in addition to those specified in this section and §98.44 so long as they do not:

(1) Discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or disability;

(2) Limit parental rights provided under Subpart D; or

(3) Violate the provisions of this section, §98.44, or the Plan. In particular, such conditions or priority rules may not be based on a parent's preference for a category of care or type of provider. In addition, such additional conditions or rules may not be based on a parent's choice of a child care certificate.

§98.21 A child's eligibility for early childhood development and before- and after-school care services.

(a) If a Grantee subsidizes, through grants or contracts under §98.51, early childhood development services or before- and after-school care services for an individual child, the child must meet the eligibility conditions under §98.20(a).

(b) Grantees may set additional conditions of eligibility or priority rules for children or families receiving such services funded under §98.51, so long as such conditions do not violate the provisions of §98.51(c)(2), or the Plan, and do not discriminate against children on the basis of race, national origin, eth-

nic background, sex, religious affiliation, or disability.

Subpart D—Program Operations (Child Care Services)—Parental Rights and Responsibilities

§98.30 Parental choice.

(a) The parent or parents of an eligible child who receives or is offered child care services under §98.50 must be offered a choice:

(1) To enroll the child with an eligible child care provider that has a grant or contract for the provision of such services, if such services are available; or

(2) To receive a child care certificate as defined in §98.2(j).

Such choice must be offered any time that child care services under §98.50 are made available to a parent.

(b) When a parent elects to enroll the child with a provider that has a grant or contract for the provision of child care services, the child will be enrolled with the provider selected by the parent to the maximum extent practicable.

(c) In cases in which a parent elects to use a child care certificate, such certificate:

(1) Will be issued directly to the parent;

(2) Must be of a value commensurate with the subsidy value of the child care services provided under paragraph (a)(1) of this section;

(3) May be used for child care services provided by a sectarian organization or agency, including those that engage in religious activities, if those services are chosen by the parent;

(4) May be expended by providers for any sectarian purpose or activity which is part of the child care services, including sectarian worship or instruction; and

(5) Shall not be considered a grant or contract to a provider but shall be considered assistance to the parent.

(d) Child care certificate programs under paragraph (a)(2) of this section must be in operation by October 1, 1992.

(e) Child care certificates must be made available to any parents offered services under §98.50.

(f)(1) For services provided under §98.50, certificates under paragraph

§ 98.31

(a)(2) of this section must permit parents to choose from a variety of child care categories, including:

- (i) Center-based child care;
- (ii) Group home child care;
- (iii) Family child care; and
- (iv) In-home child care, as limited, pursuant to § 98.16(a)(7)(ii);

Under each of the above categories, care by a sectarian provider may not be limited or excluded.

(2) Grantees must provide information regarding the range of provider options under paragraph (f)(1) of this section, including care by sectarian providers and relatives, to families offered services under § 98.50.

(g) With respect to State and local regulatory requirements under § 98.40, health and safety requirements under § 98.41, payment rates under § 98.43, and registration requirements under § 98.45, Block Grant funds will not be available to a Grantee if State or local rules, procedures or other requirements promulgated for purposes of the Block Grant significantly restrict parental choice by:

- (1) Expressly or effectively excluding:
 - (i) Any category of care or type of provider, as defined in § 98.2; or
 - (ii) Any type of provider within a category of care; or
- (2) Having the effect of limiting parental access to or choice from among such categories of care or types of providers, as defined in § 98.2; or
- (3) Excluding a significant number of providers in any category of care or of any type as defined in § 98.2.

§ 98.31 Parental access.

Grantees must have in effect procedures to ensure that providers of child care services for which assistance is provided afford parents unlimited access to their children, and to the providers caring for their children, during normal hours of provider operation and whenever the children are in the care of the provider.

§ 98.32 Parental complaints.

Grantees must:

- (a) Maintain a record of substantiated parental complaints; and
- (b) Make information regarding such parental complaints available to the public on request.

45 CFR Subtitle A (10–1–97 Edition)

§ 98.33 Consumer education.

Grantees must make available to parents and the general public consumer education information about all parental options, including the options available through child care certificates, pursuant to § 98.30(f), and other policies and practices which relate to child care services, including any applicable licensing and regulatory requirements and complaint procedures.

§ 98.34 Parental rights and responsibilities.

Nothing under this part shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

Subpart E—Program Operations (Child Care Services)—State and Provider Requirements

§ 98.40 Compliance with applicable State and local regulatory require- ments.

(a) Grantees must provide assurances that:

(1) Within the area served by the Grantee, all providers of child care services for which assistance is provided under this part comply with any licensing or regulatory requirements, as defined in § 98.2(x), applicable under State, local, and Tribal law; and

(2) Providers that are not required to be licensed or regulated under State, local, or Tribal law are required to be registered, as described in § 98.45(a), with the Grantee prior to any payment being made under the Block Grant.

(b)(1) This section does not prohibit a State from imposing more stringent standards and licensing or regulatory requirements on child care providers of services for which assistance is provided under the Block Grant than the standards or requirements imposed on other child care providers.

(2) Any such additional requirements must be consistent with the safeguards for parental choice in § 98.30(g).

§98.41 Health and safety requirements.

(a) Although the Act specifically states it does not require the establishment of any new or additional requirements if existing requirements comply with the requirements of the statute, each Grantee must provide assurances that there are in effect, within the State (or other area served by the Grantee), under State, local or Tribal law, requirements designed to protect the health and safety of children that are applicable to child care providers of services for which assistance is provided under this part. Such requirements shall include:

(1) The prevention and control of infectious diseases (including immunization);

(2) Building and physical premises safety; and

(3) Minimum health and safety training appropriate to the provider setting.

(b) Grantees may not set health and safety standards and requirements under paragraph (a) of this section that are inconsistent with the parental choice safeguards in §98.30(g).

(c) If the Grantee reduces the level of standards applicable to any child care services provided in the State after November 5, 1990, the Grantee must inform the Secretary of the rationale for such reduction in its annual report, pursuant to §98.71(e).

(d) Not later than eighteen months after submission of its initial Application in accordance with §98.13, each Grantee must complete a full review of the law applicable to, and the licensing requirements and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the area served by the Grantee, unless the Grantee has reviewed such law, requirements and policies between November 5, 1987, and November 5, 1990. The findings of this review are to be included in either the first or second annual report pursuant to §98.71(d).

(e) The requirements in paragraph (a) of this section must apply to all providers of child care services for which assistance is provided under this part, within the area served by the Grantee, except the relatives specified in paragraph (g) of this section.

(f) Each Grantee shall assure that procedures are in effect to ensure that child care providers of services for which assistance is provided under this part, within the area served by the Grantee, comply with all applicable State or local health and safety requirements described in paragraph (a) of this section.

(g) For the purposes of this section, the term child care providers does not include grandparents, aunts, or uncles, pursuant to §98.2(q)(2).

§98.42 Sliding fee scales.

(a) Grantees shall establish, and periodically revise, by rule, a sliding fee scale(s) that provides for cost sharing by families that receive Block Grant child care services under §§98.50 and 98.51.

(b) Sliding fee scale(s) shall be based on income and the size of the family and may be based on other factors as appropriate.

(c) Grantees may waive contributions from families whose incomes are at or below the poverty level for a family of the same size.

(d) The Grantee may apply different sliding fee scales to services under §§98.50 and 98.51.

§98.43 Payment rates.

(a) The Grantee must assure that the payment rates for the provision of child care under this part are sufficient to ensure equal access, in the area served by the Grantee, for eligible children to comparable child care services provided to children whose parents are not eligible to receive Block Grant assistance or child care assistance under any other Federal, State, or Tribal programs.

(b) In establishing payment rates, Grantees must take into account:

(1) Variations in the cost of providing child care:

(i) Between different categories (i.e., center-based, group home, family, in-home); and

(ii) To children of different age groups; and

(2) The additional costs of providing child care for children with special needs.

(c) Payment rates under paragraph (a) of this section must be consistent

§ 98.44

with the safeguards for parental choice in § 98.30(g).

(d) Nothing in this section shall be construed to create a private right of action.

(e) Upon petition to the Department through the Plan demonstrating the need for an alternative rate schedule, and subject to affirmative demonstration that the rate schedule will not result in discriminatory payments to providers within categories of care, a Grantee may set a payment rate schedule which includes variation in the payment rate within a category of not more than 10 percent only if:

(1) Such variation is based on a methodologically sound system for determining provider rates, as described in the Plan, pursuant to § 98.16(a)(12)(ii); and

(2) The Grantee is operating a child care program which includes child care funded under title IV-A of the Social Security Act and the Block Grant as a single system. To be considered a single system for the purposes of this section, a Grantee must operate with:

(i) The same payment rates;

(ii) The same sliding fee schedules, to the extent permissible under applicable statutes and regulations; and

(iii) The same mechanisms for selection of and payment to providers, including a certificate program, pursuant to § 98.30(a)(2).

(f) A Grantee may establish a payment schedule which does not reflect differences in provider rates based on the setting (categories of care), age of the child or the additional costs of providing care for children with special needs, but only if such payment rate schedule is based on a methodologically sound system for determining provider rates, as described in the Plan, pursuant to § 98.16(a)(12)(ii).

§ 98.44 Priority for child care services.

Grantees must give priority for services provided under § 98.50(a)(1) to:

(a) Children of families with very low family income (considering family size); and

(b) Children with special needs.

§ 98.45 Registration.

(a) Grantees must assure that providers of child care services for which as-

45 CFR Subtitle A (10–1–97 Edition)

sistance is provided under the Block Grant who are not licensed or regulated under State or local law for the purpose of providing child care are registered with the Grantee prior to receiving payment under the Block Grant.

(b) Grantee registration procedures:

(1) Should facilitate appropriate and prompt payment to providers described in paragraph (a) of this section;

(2) Should permit the Grantee to furnish information to such providers, including information on the availability of health and safety training, technical assistance, and any relevant information pertaining to applicable regulatory requirements; and

(3) Must allow providers to register with the Grantee after selection by the parent(s) of eligible children and before the payment described in paragraph (a) of this section is made.

(c) Registration under the Block Grant must be a simple, timely process through which the Grantee authorizes the provider to receive payment for child care services.

(d) Both the registration requirements and the registration process under paragraph (a) of this section must be consistent with the safeguards for parental choice in § 98.30(g).

§ 98.46 Nondiscrimination in admissions on the basis of religion.

(a) Child care providers (other than family child care providers, as defined in § 98.2(r)) that receive assistance through grants and contracts under the Block Grant shall not discriminate in admissions against any child on the basis of religion.

(b) Paragraph (a) of this section does not prohibit a child care provider from selecting children for child care slots that are not funded directly (i.e., through grants or contracts to providers) with assistance provided under the Block Grant because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal or State

funds, including direct or indirect assistance under the Block Grant, the Grantee must assure that before any further Block Grant assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The admission policies of the provider specifically provide that no person with responsibilities in the operation of the child care program, project, or activity will discriminate, on the basis of religion, in the admission of any child.

§ 98.47 Nondiscrimination in employment on the basis of religion.

(a) In general, except as provided in paragraph (b) of this section, nothing in this part modifies or affects the provision of any other applicable Federal law and regulation relating to discrimination in employment on the basis of religion.

(1) Child care providers that receive assistance through grants or contracts under the Block Grant shall not discriminate, on the basis of religion, in the employment of caregivers as defined in § 98.2(g).

(2) If two or more prospective employees are qualified for any position with a child care provider, this section shall not prohibit the provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates the provider.

(3) Paragraphs (a) (1) and (2) of this section shall not apply to employees of child care providers if such employees were employed with the provider on November 5, 1990.

(b) Notwithstanding paragraph (a) of this section, a sectarian organization may require that employees adhere to the religious tenets and teachings of such organization and to rules forbidding the use of drugs or alcohol.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal and State funds, including direct and indirect assistance under the Block Grant, the Grantee must assure that, before any further Block Grant assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The employment policies of the provider specifically provide that no person with responsibilities in the operation of the child care program will discriminate, on the basis of religion, in the employment of any individual as a caregiver, as defined in § 98.2(g).

Subpart F—Use of Block Grant Funds

§ 98.50 Child care services.

(a) After reserving 25 percent of the amount provided under the Block Grant for each fiscal year for the activities specified in § 98.51, the remaining funds shall be expended for:

(1) Child care services which are provided in accordance with the provisions of paragraph (b) of this section;

(2) Activities to improve the availability and quality of child care, as described under paragraph (c) of this section; and

(3) Administrative costs under this section.

(b) Child care services must be provided:

(1) To eligible children, as described in § 98.20;

(2) Using a sliding fee scale, as described in § 98.42;

(3) Using funding methods provided for in § 98.30; and

(4) Based on the priorities in § 98.44.

(c)(1) Activities designed to improve the availability and quality of child care include but are not limited to the activities specified in § 98.51(b) (1) and (2).

(2) Pursuant to § 98.16(a)(7)(i), the Plan must specify the activities which the Grantee will fund under this paragraph.

(d)(1) States must spend a preponderance of the remaining funds under paragraph (a) of this section for services which they provide pursuant to paragraph (a)(1) of this section. They should spend a minimum amount on activities authorized under paragraphs (a)(2) and (a)(3).

(2) Except as provided in paragraph (d)(3) of this section, to meet the requirements of paragraph (d)(1) of this section:

§ 98.51

45 CFR Subtitle A (10–1–97 Edition)

(i) At least 90 percent of the funds reserved for assistance under this section must be expended for services pursuant to paragraph (a)(1) of this section, and

(ii) Not more than 10 percent of the funds may be expended for activities as described in paragraphs (a)(2) and (a)(3) of this section.

(3) Upon petition to the Department in its annual Application, a Grantee may expend an additional five percent of the funds reserved for assistance under this section for activities as described in paragraphs (a)(2) and (a)(3) of this section if, in the application required pursuant to § 98.13, the Grantee demonstrates that the expenditures for operation of the certificate program and related consumer education, as required in this part, equal or exceed 10 percent of the funds available under this section.

§ 98.51 Activities to improve the quality of child care and to increase the availability of early childhood development programs and before- and after-school care services.

(a) The Grantee shall reserve 25 percent of the amount provided under the Block Grant for each fiscal year for the activities specified in this section.

(b) Each Grantee receiving funds to operate a program under this part shall use not less than:

(1) 18.75 percent of the total amount of a fiscal year's Block Grant funds to establish or expand and conduct, through the provision of grants or contracts:

(i) Early childhood development programs, operated in accordance with the provisions of paragraph (d) of this section;

(ii) Before- and after-school child care programs, operated in accordance with the provisions of paragraph (e) of this section; or

(iii) Both; and

(2) Five percent of the total amount of a fiscal year's Block Grant funds on one or more of the following activities to improve the quality of care:

(i) Operating directly or providing financial assistance to organizations (including private non-profit organizations, public organizations, and units of general purpose local government) for the development, establishment, expansion, operation, and coordination

of resource and referral programs specifically related to child care;

(ii) Making grants or providing loans to child care providers to assist such providers in meeting applicable State, local, and Tribal child care standards, including applicable health and safety requirements, pursuant to §§ 98.40 and 98.41;

(iii) Improving the monitoring of compliance with, and enforcement of, applicable State, local, and Tribal requirements pursuant to §§ 98.40 and 98.41;

(iv) Providing training and technical assistance in areas appropriate to the provision of child care services, such as training in health and safety, nutrition, first aid, the recognition of communicable diseases, child abuse detection and prevention, and care of children with special needs; and

(v) Improving salaries and other compensation (such as fringe benefits) for full- and part-time staff who provide child care services for which assistance is provided under this part.

An additional one and one-quarter percent of the total funds received under the Block Grant may be used at the discretion of the Grantee for any of the purposes allowed in paragraph (b)(1) or (b)(2) of this section.

(c) For programs described in paragraph (b)(1) of this section, Grantees must:

(1) Provide funding through grants and contracts; and

(2)(i) Give highest priority to geographic areas within the area served by the Grantee that are eligible to receive grants under Section 1006 of the Elementary and Secondary Education Act of 1965; and

(ii) Then give priority to any other areas with concentrations of poverty, and any areas with very high or very low population densities.

(d) Early childhood development programs funded under this section:

(1) Must consist of services that are intended to provide an environment that enhances the educational, social, cultural, emotional, and recreational development of children; and

(2) Are not intended to serve as a substitute for compulsory academic programs.

(e) Before- and after-school programs funded under this section:

(1) Must be provided Monday through Friday, including school holidays and vacation periods other than legal public holidays, to children attending early childhood development programs, kindergarten, or elementary or secondary school classes during such times of the day and on such days that the regular instructional services are not in session; and

(2) Are not intended to extend or replace the regular academic program.

(f) Administrative costs associated with activities funded under paragraphs (a), (b)(1), and (b)(2) of this section are to be included with amounts expended for program activities in determining whether Grantees have met the requirements of those respective paragraphs.

(g) Pursuant to §98.16(a)(8)(i), the Plan must specify the activities which the Grantee will fund under this section.

§98.52 Administrative activities.

(a) Block Grant funds may be used for administrative activities, as limited by §98.50(d).

(b) As part of its Application, as provided in §98.13(a)(6), a Grantee must provide an estimate of total funds that will be used for administrative activities by both the Grantee and subgrantees during the program period. A list of all administrative activities on which the estimate is based must also be provided with the estimate. These activities may include but are not limited to:

(1) Salaries and related costs of the staff of the lead agency or other agencies engaged in the administration and implementation of the program pursuant to §98.11. Program administration and implementation includes the following types of activities:

(i) Determining eligibility for child care services;

(ii) Planning, developing, and designing the Block Grant program;

(iii) Establishing and operating a certificate program;

(iv) Providing local officials and citizens with information about the program, including the conduct of public hearings;

(v) Preparing the Grantee's Application and Plan;

(vi) Developing systems, including automated information management systems;

(vii) Developing agreements with administering agencies in order to carry out program activities;

(viii) Monitoring program activities for compliance with program requirements;

(ix) Preparing reports and other documents related to the program for submission to the Secretary;

(x) Maintaining substantiated complaint files in accordance with the requirements of §98.32;

(xi) Coordinating the provision of Block Grant services with other Federal, State, and local child care, early childhood development programs, and before- and after-school care programs;

(xii) Coordinating the resolution of audit and monitoring findings;

(xiii) Evaluating program results; and

(xiv) Managing or supervising persons with responsibilities described in paragraphs (b)(1) (i) through (xiii) of this section;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services, including such services as accounting services, performed by Grantees or subgrantees or under agreements with third parties;

(4) Audit services as required at §98.65;

(5) Other costs for goods and services required for the administration of the program, including rental or purchase of equipment, utilities, and office supplies; and

(6) Indirect costs as determined by an indirect cost agreement or cost allocation plan pursuant to §98.55.

(c) Expenditures on any administrative activities related to the services under §98.50 are subject to the requirements and limitation under paragraph (d) of §98.50, and together with expenditures for quality and availability, must not exceed the limitation under §98.50(d)(2), except as provided under §98.50(d)(3).

§98.53 Supplementation.

(a) Grantees must provide assurances that funds received under the Block

§ 98.54

Grant will be used only to supplement, not supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs.

(b) The Grantee must determine separate total amounts of Federal, State, and local funds expended for such services during an initial base period (as defined in paragraph (b)(1) of this section) and during subsequent periods for child care services and related programs. The Grantee must assure that the amounts of funding for such services from these other sources for each subsequent period are maintained at least at the levels of effort established for the base period.

(1) The base period will be a twelve-month period (e.g., the State fiscal year), which includes the month one year prior to the first month for which the initial Application for Block Grant funds is made. Subsequent periods are each twelve-month period following the preceding period. Grantees may establish base periods and associated levels of effort on:

(i) A level of government basis (e.g., Federal, State and local);

(ii) A program-by-program basis; or

(iii) An alternative basis that provides for fiscal accountability.

(2) Should a Grantee choose to establish base-period levels of effort on a basis other than a level of government basis, that basis will be reflected in the Plan, pursuant to § 98.16(a)(16).

(3) For purposes of this section, child care services and related programs are those services and programs which are included by the Grantee for funding under its Block Grant Plan.

(4) Amounts established for the base period will be included in the initial Application, or first subsequent Application pursuant to § 98.13(a)(8)(i); amounts expended for subsequent periods will be included in subsequent Applications, pursuant to § 98.13(a)(8)(ii).

(5) Grantees must amend the amounts determined in paragraph (b) of this section, when necessary, to reflect more accurate data or program changes.

(6) Reductions in Federal funding for programs included in the base period computation will be taken into consideration in determining whether a

45 CFR Subtitle A (10–1–97 Edition)

Grantee has met this requirement. For Tribal Grantees, reductions in State funding will be similarly considered. Information regarding the nature, extent, and basis for the reduction must be included in the Grantee's Application, pursuant to § 98.13(a)(8)(iii).

§ 98.54 Restrictions on the use of funds.

(a) *General.* (1) Block Grant funds may not be expended for any activity not authorized in these regulations, or which does not meet the additional restrictions and limitations in paragraphs (b) through (d) of this section.

(2) Funds must be expended in accordance with applicable State and local laws, except as superseded by § 98.3.

(b) *Construction.* (1) For State and local agencies and nonsectarian agencies or organizations, no funds shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility. However, funds may be expended for minor remodeling, and for upgrading child care facilities to assure that providers meet State and local child care standards, including applicable health and safety requirements.

(2) For sectarian agencies or organizations, the prohibitions in paragraph (b)(1) of this section apply; however, funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to § 98.41.

(c) *Tuition.* Funds may not be expended for students enrolled in grades 1 through 12 for:

(1) Any service provided to such students during the regular school day;

(2) Any service for which such students receive academic credit toward graduation; or

(3) Any instructional services which supplant or duplicate the academic program of any public or private school.

(d) *Sectarian Purposes and Activities.* Funds provided under grants or contracts to providers may not be expended for any sectarian purpose or activity, including sectarian worship or

instruction. Pursuant to § 98.2(j), assistance provided to parents through certificates is not a grant or contract. Funds provided through child care certificates may be expended for sectarian purposes or activities, including sectarian worship or instruction when provided as part of the child care services.

(e) Block Grant funds may not be used as the non-Federal share for other Federal grant programs.

§ 98.55 Cost allocation.

(a) Grantees and subgrantees must keep on file cost allocation plans or indirect cost agreements, as appropriate, which have been amended to include costs allocated to the Block Grant.

(b) Subgrantees that do not already have a negotiated indirect rate with the Federal government should prepare and keep on file cost allocation plans or indirect cost agreements, as appropriate.

(c) Approval of the cost allocation plans or indirect cost agreements is not specifically required by these regulations, but these plans and agreements are subject to review.

Subpart G—Financial Management

§ 98.60 Availability of funds.

(a) In accordance with the apportionment of funds from the Office of Management and Budget, and subject to the availability of appropriations, the Secretary:

(1) May withhold no more than one-quarter of one percent of the funds made available for a fiscal year for the provision of technical assistance; and

(2) Will award the remaining Block Grant funds to Grantees that have an approved Application and Plan.

(b) The Block Grant program does not require State or local match.

(c) The Secretary may make payments in installments, and in advance or by way of reimbursement, with necessary adjustments due to overpayments or underpayments.

(d)(1) State and Territorial Grantees must obligate their allotments in the fiscal year in which funds are awarded or in the succeeding fiscal year. Unliquidated obligations as of the end of the succeeding fiscal year must be liq-

uidated within one year. Except for paragraph (d)(2) of this section, determination of whether funds have been obligated and liquidated will be based on:

(i) State or local law; or,

(ii) If there is no applicable State or local law, the regulation at 45 CFR 92.3, Obligations and Outlays (expenditures).

(2) Obligations may include subgrants or contracts which require the payment of funds from the Grantee to a third party (e.g., subgrantee or contractor). However, the following are not considered third party subgrantees or contractors:

(i) A local office of the lead agency;

(ii) Another entity at the same level of government as the lead agency; or

(iii) A local office of another entity at the same level of government as the lead agency.

(3) For purposes of the Block Grant, funds for child care services provided through a child care certificate will be considered obligated when a Grantee or subgrantee issues to a family in writing a child care certificate that indicates:

(i) The amount of funds that will be paid to a child care provider or family, and

(ii) The specific length of time covered by the certificate, which is limited to the date established for redetermination of the family's eligibility, but must be no later than the end of the liquidation period.

(4) Any funds not obligated during the obligation period specified in paragraph (d)(1) of this section will revert to the Federal government. Any funds not liquidated by the end of the liquidation period specified in paragraph (d)(1) of this section will also revert to the Federal government.

(e) Tribal Grantees are not subject to the requirements in paragraph (d) of this section. Such Grantees must obligate and liquidate their allotments by the end of the second fiscal year following the fiscal year for which the grant is awarded. Any funds that remain unliquidated by the end of such period will revert to the Federal government.

(f) Cash advances to Grantees or by Grantees to subgrantees or contractors shall be limited to the minimum

§ 98.61

amounts needed and shall be timed to be in accord with the actual, immediate cash requirements of the Grantee, subgrantee, or contractor in carrying out the purpose of the program in accordance with 31 CFR part 205.

(g)(1) Block Grant funds are available for use by the Grantee only after the funds are made available by Congress for Federal obligation unless:

(i) Costs are incurred for planning activities related to the submission of an initial Block Grant Application and Plan and

(ii) The planning activities occur after November 5, 1990.

(2) Federal obligation of funds for planning costs, pursuant to paragraph (g)(1) of this section is subject to the actual availability of the appropriation.

(h) Funds that are returned to Grantees and subgrantees (e.g., loan repayments, funds deobligated by cancellation of a child care certificate, unused subgrantee funds) as well as program income (e.g., contributions made by families directly to the Grantee or subgrantee for the cost of care where the Grantee or subgrantee has made a full payment to the child care provider) shall:

(1) If received by the Grantee or subgrantee during the obligation period specified in paragraph (d)(1) of this section, be used for activities specified in the Grantee's approved Plan and must be obligated by the end of the obligation period; or

(2) If received by the Grantee or subgrantee during the liquidation period specified in paragraph (d)(1) of this section:

(i) Be used for activities specified in the Grantee's approved Plan if State or local laws or procedures permit such use. These funds must be expended by the end of the liquidation period; or

(ii) If State or local laws or procedures do not permit such use, be returned to the Federal government; or

(3) If received by the Grantee or subgrantee after the liquidation period specified in paragraph (d)(1) of this section:

(i) Be used for activities specified in the Grantee's approved Plan if State or local laws or procedures permit such use; or

45 CFR Subtitle A (10-1-97 Edition)

(ii) If State or local laws or procedures do not permit such use, be returned to the Federal government; or

(i) Repayment of loans made by Grantees and subgrantees, pursuant to § 98.51(b)(2)(ii), may be made in cash or in services provided in-kind. Payment provided in-kind must be based on fair market value. All loans must be fully repaid.

(j) Grantees must recover child care payments which are the result of fraud. These payments must be recovered from the part(ies) responsible for committing the fraud.

§ 98.61 Allotments for States.

(a) An amount equal to the funds appropriated for the Block Grant, less amounts reserved for technical assistance and amounts reserved for the Territories and Tribes, pursuant to §§ 98.60(a) and 98.62 (a) and (b), shall be allotted to States. For purposes of this section and § 98.63, the term "State" means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) Funds will be allotted to States based upon the formula specified in section 6580(b) of the Act.

§ 98.62 Allotments for Territories and Tribes.

(a) An amount up to one-half of one percent of the amount appropriated for the Block Grant shall be reserved for the U.S. Territories of Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (Palau).

(1) Funds shall be allotted to Territories based upon the following factors:

(i) A Young Child factor—the ratio of the number of children in the Territory under five years of age to the number of such children in all Territories; and

(ii) An Allotment Proportion factor—determined by dividing the per capita income of all individuals in all the Territories by the per capita income of all individuals in the Territory.

(A) Per capita income shall be:

(I) Equal to the average of the annual per capita incomes for the most recent period of three consecutive years for which satisfactory data are available

at the time such determination is made; and

(2) Determined every two years.

(B) Per capita income determined, pursuant to paragraph (a)(1)(ii)(A) of this section, will be applied in establishing the allotment for the fiscal year for which it is determined and for the following fiscal year.

(C) If the Allotment Proportion factor determined at paragraph (a)(1)(ii) of this section:

(1) Exceeds 1.2, then the Allotment Proportion factor of the Territory shall be considered to be 1.2; or

(2) Is less than 0.8, then the Allotment Proportion factor of the Territory shall be considered to be 0.8.

(2) The formula used in calculating a Territory's allotment is as follows:

(i)

$$\frac{YCF_t \times APF_t}{\sum (YCF_t \times APF_t)} \times \begin{array}{l} \text{amount reserved} \\ \text{for Territories at} \\ \text{paragraph (a) of} \\ \text{this section.} \end{array}$$

(ii) For purposes of the formula specified at paragraph (a)(2)(i) of this section, the term "YCF_t" means the Territory's Young Child factor as defined at paragraph (a)(1)(i) of this section.

(iii) For purposes of the formula specified at paragraph (a)(2)(i) of this section, the term "APF_t" means the Territory's Allotment Proportion factor as defined at paragraph (a)(1)(ii) of this section.

(b) An amount up to three percent of the amount appropriated for the Block Grant shall be reserved for Indian Tribes and Tribal organizations.

(1) Except as specified in paragraph (b)(2) of this section, grants to individual Tribal Grantees will be equal to the sum of:

(i) A base amount as set by the Secretary; and

(ii) An additional amount per Indian child under age 13 (or such similar age as determined by the Secretary from the best available data), which is determined by dividing the amount of funds available, less amounts set aside for eligible Tribes, pursuant to paragraph (b)(1)(i) of this section, by the number of all Indian children living on or near Tribal reservations or other appropriate area served by the Tribal Grantee, pursuant to § 98.80(e).

(2) Grants to Tribes with fewer than 50 Indian children which apply as part of a consortium, pursuant to § 98.80(b)(1), are equal to the sum of:

(i) A portion of the base amount, pursuant to paragraph (b)(1)(i) of this section, that bears the same ratio as the number of Indian children in the Tribe living on or near the reservation, or other appropriate area served by the Tribal Grantee, pursuant to § 98.80(e), does to 50; and

(ii) An additional amount per Indian child, pursuant to paragraph (b)(1)(ii) of this section.

(3) Tribal consortia will receive grants that are equal to the sum of the individual grants of their members.

(c) All funds reserved for Territorial Grantees at paragraph (a) of this section will be allotted to Territorial Grantees, and all funds reserved for Tribal Grantees at paragraph (b) of this section will be allotted to Tribal Grantees. Any such funds that are returned after they have been allotted will revert to the Federal government.

§ 98.63 Reallotment.

(a) Any portion of a State's allotment that is not required to carry out its Plan, in the period for which the allotment is made available, shall be reallotted to other State Grantees in proportion to the original allotments. For purposes of this section and § 98.61, the term "State" means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. Reallotment does not apply to Territorial or Tribal allotments, and Territorial and Tribal Grantees may not receive reallotted State funds.

(1) Each year, the State shall report to the Secretary either the dollar amount from the previous year's grant which it will be unable to obligate by the end of the obligation period or that all funds will be obligated during such time. Such report must be postmarked by April 1st.

(2) Based upon the reallotment reports submitted by States, the Secretary will reallot Block Grant funds.

(i) If the total amount available for reallotment is \$25,000 or more, funds will be reallotted to States in proportion to each State's allotment for the

§ 98.64

applicable fiscal year's funds, pursuant to § 98.61(b).

(ii) If the amount available for reallocation is less than \$25,000, the Secretary will not reallocate any funds, and such funds will revert to the Federal government.

(iii) If an individual reallocation award to a State is less than \$500, the Secretary will not issue the award, and such funds will revert to the Federal government.

(iv) If a State does not accept its share of the reallocated funds, those funds will be returned to the Federal government.

(3) If a State does not submit a reallocation report by the deadline for report submittal, either:

(i) The Secretary will determine that State does not have any funds available for reallocation; or

(ii) In the case of a report received after April 1st, any funds reported to be available for reallocation shall revert to the Federal government.

(b) States receiving reallocated funds must obligate and expend these funds in accordance with § 98.60. The reallocation of funds does not extend the obligation period or the program period for expenditure of such funds.

§ 98.64 Financial reporting.

(a) Beginning 90 days after the end of fiscal year 1992, and within 90 days after the end of each succeeding fiscal year, all Grantees must submit to the Secretary a Standard Form 269 or 269A, Financial Status Report, to report the status of each fiscal year's grant. Final reports for a fiscal year will be due after the end of the program period.

(b) The Secretary reserves the right to require financial reports less frequently than specified in paragraph (a) of this section.

(c) If a Grantee or subgrantee earns program income (e.g., contributions made by families directly to the Grantee or subgrantee for the cost of care, pursuant to § 98.42(a)), this income must be reported.

(d) Funds returned to a Grantee or subgrantee, pursuant to § 98.60(h), shall be reported as follows:

(1) If the funds are returned before the close of the period covered by the financial report, they should be in-

45 CFR Subtitle A (10–1–97 Edition)

cluded as a net adjustment to total expenditures in the report; or

(2) If the funds are returned after submission of the final financial report, they should be reported on a revised report for the same period and be included as a net adjustment to total expenditures.

§ 98.65 Audits.

(a) Each Grantee must have an audit conducted after the close of each program period in accordance with OMB Circular A-128.

(b) Grantees are responsible for ensuring that subgrantees are audited in accordance with appropriate audit requirements.

(c) Not later than 30 days after the completion of the audit, Grantees must submit a copy of their audit report to the legislature of the State or, if applicable, to the Tribal Council(s). Grantees must also submit a copy of their audit report to the HHS Inspector General for Audit Services, as well as to their cognizant agency, if applicable.

(d) Any amounts determined through an audit not to have been expended in accordance with these statutory or regulatory provisions, or with the Plan, and which are subsequently disallowed by the Department shall be repaid to the Federal government, or the Secretary will offset such amounts against any other Block Grant funds to which the Grantee is or may be entitled.

(e) Grantees must provide access to appropriate books, documents, papers and records to allow the Secretary to verify that Block Grant funds have been expended in accordance with the statutory and regulatory requirements of the program, and with the Plan.

§ 98.66 Disallowance procedures.

(a) Any expenditures not made in accordance with the Act, the implementing regulations, or the Grantee's approved Plan, will be subject to disallowance.

(b) If the Department, as the result of an audit or a review, finds that expenditures by a Grantee should be disallowed, the Department will notify the Grantee of this decision in writing.

(c)(1) If the Grantee agrees with the finding that amounts were not expended in accordance with the Act,

these regulations, or the Plan, the Grantee shall fulfill the provisions of the disallowance notice and repay any amounts improperly expended; or

(2) The Grantee may appeal the finding:

(i) By requesting reconsideration from the Assistant Secretary, pursuant to paragraph (f) of this section; or

(ii) By following the procedure in paragraph (d) of this section.

(d) A Grantee may appeal the disallowance decision to the Departmental Appeals Board in accordance with 45 CFR part 16.

(e) The Grantee may appeal a disallowance of costs that the Department has determined to be unallowable under an award. A Grantee may not appeal the determination of award amounts or disposition of unobligated balances.

(f) The Grantee's request for reconsideration in paragraph (c)(2)(i) of this section must be postmarked no later than 30 days after the receipt of the disallowance notice. A Grantee may request an extension within the 30-day timeframe. The request for reconsideration, pursuant to paragraph (c)(2)(i) of this section, need not follow any prescribed form, but it shall contain:

(1) The amount of the disallowance;

(2) The Grantee's reasons for believing that the disallowance was improper; and

(3) A copy of the disallowance decision issued pursuant to paragraph (b) of this section.

(g)(1) Upon receipt of a request for reconsideration, pursuant to paragraph (c)(2)(i) of this section, the Assistant Secretary or the Assistant Secretary's designee will inform the Grantee that the request is under review.

(2) The Assistant Secretary or the designee will review any material submitted by the Grantee and any other necessary materials.

(3) If the reconsideration decision is adverse to the Grantee's position, the response will include a notification of the Grantee's right to appeal to the Departmental Appeals Board, pursuant to paragraph (d) of this section.

(h) If a Grantee refuses to repay amounts after a final decision has been made, the amounts will be offset

against future payments to the Grantee.

(i) The appeals process in this section is not applicable if the disallowance is part of a compliance review, pursuant to § 98.91(b), the findings of which have been appealed by the Grantee.

(j) Disallowances under the Block Grant program are subject to interest regulations at 45 CFR part 30. Interest will begin to accrue from the date of notification.

§ 98.67 Fiscal requirements.

(a) Grantees must expend and account for Block Grant funds in accordance with their own laws and procedures for expending and accounting for their own funds.

(b) Unless otherwise specified in this part, contracts which entail the expenditure of Block Grant funds shall comply with the laws and procedures generally applicable to expenditures by the contracting agency of its own funds.

(c) Fiscal control and accounting procedures must be sufficient to permit:

(1) Preparation of reports required under § 98.64 and under subpart H; and

(2) The tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the provisions of this part.

Subpart H—Program Reporting Requirements

§ 98.70 Annual report requirement.

(a) Grantees that receive assistance under the Block Grant shall prepare and submit to the Secretary an annual report. The report will be submitted in the manner specified by the Secretary by December 31 and will cover the most recent program period which ended on September 30 of that year.

(b) The first such report shall be an interim report, covering expenditures through September 30, 1992, and shall be submitted no later than December 31, 1992.

(c) Annual reports to the Secretary shall include the information listed in § 98.71.

§ 98.71 Content of report.

At a minimum, a Grantee's report to the Secretary, as required in § 98.70, shall:

(a) Specify the uses for which the Grantee expended funds under §§ 98.50 through 98.52 and the amount of funds expended for such uses, pursuant to § 98.13(a)(6)); and

(b) To the extent data are reasonably available, contain available data on the manner in which the child care needs of families in the area served by the Grantee are being fulfilled, including information concerning:

(1) The number of children being assisted with funds provided under the Block Grant, and under other Federal child care and pre-school programs;

(2) The type and number of child care programs, child care providers, caregivers, and support personnel located in the area served by the Grantee;

(3) Salaries and other compensation paid to full- and part-time staff who provide child care services; and

(4) Activities to encourage public-private partnerships that promote business involvement in meeting child care needs;

(c) Describe the extent to which the affordability and availability of child care services has increased;

(d) If applicable, describe, in either the first or second annual report, the findings of the Grantee's review of its licensing and regulatory requirements and policies, pursuant to § 98.41(d), including a description of actions taken by the Grantee in response to such reviews;

(e) Contain, if applicable, an explanation of any Grantee action which reduces the level of child care standards, as required in § 98.41(c);

(f) Describe the standards and health and safety requirements applicable to child care providers in the State or other area served by the Grantee, including a description of Grantee efforts to improve the quality of child care; and

(g) Any additional information that the Secretary shall require.

Subpart I—Indian Tribes

§ 98.80 General procedures and requirements.

An Indian Tribe or Tribal organization (as defined at §§ 98.2(u) and 98.2(oo)) may be awarded grants to plan and carry out programs for the purpose of increasing the availability, affordability, and quality of child care and childhood development programs subject to the following conditions:

(a) An Indian Tribe applying for or receiving Block Grant funds shall be subject to all the requirements under this part, unless otherwise indicated.

(b) An Indian Tribe applying for or receiving Block Grant funds must:

(1) Have at least 50 children under 13 years of age (or such similar age, as determined by the Secretary from the best available data) in order to be eligible to operate a Block Grant program. This limitation does not preclude an Indian Tribe with fewer than 50 children under 13 years of age from participating in a consortium which receives Block Grant funds; and

(2) Demonstrate that it has the ability (including skills, personnel, resources, community support, and other necessary components) to satisfactorily carry out the program.

(c) A consortium representing more than one Indian Tribe may be eligible to receive Block Grant funds on behalf of a particular Tribe if:

(1) The consortium adequately demonstrates that each participating Tribe authorizes the consortium to receive Block Grant funds on behalf of each Tribe or Tribal organization in the consortium; and

(2) The consortium consists of Tribes which each meet the eligibility requirements for the Block Grant program as defined in this part, or which would otherwise meet the eligibility requirements if the Tribe or Tribal organization had at least 50 children under 13 years of age; and

(3) All the participating consortium members are in geographic proximity to one another (including operation in a multi-State area) or have an existing consortium arrangement; and

(4) The consortium demonstrates that it has the managerial, technical

and administrative staff with the ability to administer government funds properly, manage a Block Grant program and comply with the provisions of the Act and of this part.

(d) The awarding of a grant under this section shall not affect the eligibility of any Indian child to receive Block Grant services provided by the State or States in which the Indian Tribe is located.

(e) For purposes of the Block Grant, the determination of the number of children in the Tribe, pursuant to paragraph (b)(1) of this section, will include Indian children living on or near reservations, with the exception of Tribes in Alaska, California and Oklahoma.

(f) In determining eligibility for services pursuant to § 98.50(a)(1), a Tribal program may use either:

(1) 75 percent of the State median income for a family of the same size; or

(2) 75 percent of the median income for a family of the same size residing in the area served by the Tribal Grantee.

§ 98.81 Application and plan.

(a) In order to receive Block Grant funds, Indian Tribes (as defined at § 98.2(u)) must submit an Application (as defined at § 98.13) which provides that:

(1) The applicant will coordinate, to the maximum extent feasible, with the lead agency(ies) in the State(s) in which the applicant will carry out Block Grant programs or activities; and

(2) In the case of an applicant located in a State other than Alaska, California, or Oklahoma, Block Grant programs and activities will be carried out on an Indian reservation for the benefit of Indian children.

(b) The initial Application under paragraph (a) of this section must include a Plan which meets the provisions of this part and shall be for a two-year period, pursuant to § 98.17(b).

§ 98.82 Coordination.

Tribal applicants will coordinate:

(a) To the maximum extent feasible, with the lead agency in the State or States in which the applicant will carry out the Block Grant program; and

(b) With other Federal, State, local, and Tribal child care and childhood development programs.

§ 98.83 Requirements for Tribal programs.

(a) The Grantee must designate an agency, department, or unit to act as the lead agency to administer the Block Grant program.

(b) With the exception of Alaska, California, and Oklahoma, programs and activities must be carried out on an Indian reservation for the benefit of Indian children.

(c) In the case of a Tribal Grantee which is a consortium, variations in Block Grant programs or requirements and in child care licensing, regulatory and health and safety requirements must be specified in written agreements between the consortium and the Tribe.

(d) Tribal Grantees shall not be subject to the requirements at §§ 98.44(a) and 98.51(c)(2).

(e) The base amount of any Tribal grant is not subject to the expenditure requirements at § 98.50(a), the requirement to reserve funds under § 98.51(a), or the percentage requirement for child care services at paragraph (g) of this section. The base amount may be expended for any costs consistent with the purposes and requirements of the Block Grant.

(f) Tribal Grantees whose total allotment pursuant to § 98.62(b) is less than an amount established by the Secretary which approximates the least amount which could be allotted to any individual State or Territory pursuant to §§ 98.61(a) and 98.62(a) shall not be subject to the following requirements:

(1) The assurance at § 98.15(b);

(2) The requirement for certificates at § 98.30(a) and § 98.30(e);

(3) The requirements for allocation of funds at § 98.50 (a) and (d); and

(4) The requirements for allocation of funds at § 98.51 (a) and (b).

(g) Tribal Grantees described in paragraph (f) of this section must reserve at least 63.75 percent of that portion of their total per-child amount, as allotted pursuant to § 98.62(b)(1)(ii) for Tribes or § 98.62(b)(2)(ii) for consortia, for direct child care services as defined

§ 98.90

at § 98.2(l). The services are to be provided to:

(1) Eligible children, as described in § 98.20; and

(2) Using a sliding fee scale, as described in § 98.42.

(h) Tribal Grantees described in paragraph (f) of this section may use the remaining 36.25 percent of that portion of their total per-child amount as allotted pursuant to § 98.62(b)(1)(ii) for Tribes or § 98.62(b)(2)(ii) for consortia, for child care services or for activities to improve the availability and quality of child care and for administrative costs. Such services, activities and costs must be consistent with the purposes and requirements of the Block Grant.

(i) Administrative costs associated with child care services funded under paragraph (g) of this section must be included as costs under paragraph (h) of this section or as costs under the base amount.

Subpart J—Monitoring, Non-compliance and Complaints

§ 98.90 Monitoring.

(a) The Secretary will monitor programs funded under the Block Grant for compliance with:

(1) The Act;

(2) The provisions of this part; and

(3) The provisions and requirements set forth in the Block Grant Plan approved under § 98.18;

(b) If a review or investigation reveals evidence that the Grantee, or an entity providing services under contract or agreement with the Grantee, has failed to substantially comply with the Plan or with one or more provisions of the Act or implementing regulations, the Secretary will issue a preliminary notice to the Grantee of possible non-compliance. The Secretary shall consider comments received from the Grantee within 60 days (or such longer period as may be agreed upon between the Grantee and the Secretary).

(c) Pursuant to an investigation conducted under paragraph (a) of this section, a Grantee shall make appropriate books, documents, papers, manuals, instructions, and records available to the Secretary, or any duly authorized representatives, for examination or copy-

45 CFR Subtitle A (10–1–97 Edition)

ing on or off the premises of the appropriate entity, including subgrantees and contractors, upon reasonable request.

(d) (1) Grantees and subgrantees must retain all Block Grant records, as specified in paragraph (c) of this section, and any other records of Grantees and subgrantees which are needed to substantiate compliance with Block Grant requirements, for the period of time specified in paragraph (e) of this section.

(2) Grantees and subgrantees must provide through an appropriate provision in their contracts that their contractors will retain and permit access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract.

(e) *Length of retention period.* (1) Except as provided in paragraph (e)(2) of this section, records specified in paragraph (c) of this section must be retained for three years from the day the Grantee or subgrantee submits to the Secretary its final Financial Status Report (Standard Form 269 or 269A) for the program period.

(2) If any litigation, claim, negotiation, audit, disallowance action, or other action involving the records has been started before the expiration of the three-year retention period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

§ 98.91 Non-compliance.

(a) If after reasonable notice to a Grantee, pursuant to §§ 98.90 or 98.93, a final determination is made that:

(1) There has been a failure by the Grantee, or by an entity providing services under contract or agreement with the Grantee, to comply substantially with any provision or requirement set forth in the Plan approved under § 98.16; or

(2) If in the operation of any program for which funding is provided under the Block Grant, there is a failure by the Grantee, or by an entity providing services under contract or agreement with the Grantee, to comply substantially with any provision of the Act or

this part, the Secretary will provide to the Grantee a written notice of a finding of non-compliance. This notice will be issued within 60 days of the preliminary notification in § 98.90(b), or within 60 days of the receipt of additional comments from the Grantee, whichever is later, and will provide the opportunity for a hearing, pursuant to part 99.

(b) The notice in paragraph (a) of this section will include all relevant findings, as well as any penalties or sanctions to be applied, pursuant to § 98.92.

(c) Issues subject to review at the hearing include the finding of non-compliance, as well as any penalties or sanctions to be imposed pursuant to § 98.92.

§ 98.92 Penalties and sanctions.

(a) Upon a final determination that the Grantee has failed to substantially comply with the Act, the implementing regulations, or the Plan, one of the following penalties will be applied:

(1) No further payments under the Block Grant will be made to such Grantee; or,

(2) In the case of noncompliance in the operation of a program or activity, no further payments to the Grantee will be made with respect to such program or activity.

(b) The penalty provided under paragraph (a) of this section will continue until the Secretary is satisfied that there is no longer any such failure to comply or that the noncompliance will be promptly corrected.

(c) In addition to imposing the penalties described in paragraph (a) of this section, the Secretary may impose other appropriate sanctions, including recoupment of money improperly expended for purposes prohibited or not authorized by the Act or the implementing regulations and disqualification of the Grantee from the receipt of further funding under the Block Grant.

(d) If a Grantee is subject to additional sanctions as provided under paragraph (c) of this section, specific identification of any additional sanctions being imposed will be provided in the notice provided pursuant to § 98.91.

(e) Nothing in this section, or in §§ 98.90 or 98.91, will preclude the Grantee and the Department from informally

resolving a possible compliance issue without following all of the steps described in §§ 98.90, 98.91 and 98.92. Penalties and/or sanctions, as described in paragraphs (a) and (c) of this section, may nevertheless be applied, even though the issue is resolved informally.

§ 98.93 Complaints.

(a) This section applies to any complaint (other than a complaint alleging violation of the nondiscrimination provisions) that a Grantee has failed to use its allotment in accordance with the terms of the Act, the implementing regulations, or the Plan. The Secretary is not required to consider a complaint unless it is submitted as required by this section. Complaints with respect to discrimination should be referred to the Office of Civil Rights of the Department.

(b) Complaints with respect to the Block Grant must be submitted in writing to the Assistant Secretary for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447. The complaint must identify the provision of the Plan, the Act, or this part that was allegedly violated, specify the basis for alleging the violation(s), and include all relevant information known to the person submitting it.

(c) The Department shall promptly furnish a copy of any complaint to the affected Grantee. Any comments received from the Grantee within 60 days (or such longer period as may be agreed upon between the Grantee and Department) shall be considered by the Department in responding to the complaint. The Department will conduct an investigation of complaints, where appropriate.

(d) The Department will provide a written response to complaints within 180 days after receipt. If a final resolution cannot be provided at that time, the response will state the reasons why additional time is necessary.

(e) Complaints which are not satisfactorily resolved through communication with the Grantee will be pursued through the process described in § 98.90.